

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 12 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAWRENCE JOE BAUER,

Defendant - Appellant.

No. 03-30366

D.C. No. CR-02-00099-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted December 5, 2005**

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Lawrence Joe Bauer appeals his jury-trial conviction and sentence of 106 months for sexual abuse, in violation of 21 U.S.C. §§ 1153 and 2242(2)(B).

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Bauer has filed a brief stating there are no grounds for relief, and a motion to withdraw as counsel of record. Bauer filed a pro se supplemental brief.

We have conducted an independent review of the record pursuant to *Penon v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. We remand the sentence for further proceedings consistent with *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc), because Bauer was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory. *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED**, and the sentence is **REMANDED**.